

## QUESTION NO. 2

### Amendment to the Nevada Constitution

Assembly Joint Resolution No. 33 of the 68th Session

### CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to revise the provisions regarding the Commission on Judicial Discipline?

Yes ..... ☐

No ..... ☐

### EXPLANATION

The Commission on Judicial Discipline was created by constitutional amendment in 1976. The Commission's membership is comprised of two justices or judges appointed by the Nevada Supreme Court, two licensed Nevada attorneys, and three members of the public. Currently, the Commission may only consider matters that are formally brought to its attention by members of the public. The Nevada Supreme Court has sole jurisdiction to adopt rules for the operation of the Commission, including rules governing the confidentiality of proceedings, the grounds of censure and discipline, and the conduct of investigations and hearings. The proposed amendment to the Nevada Constitution redistributes the authority to establish the rules between the Legislature, the Nevada Supreme Court, and the Commission itself. Under the proposal, the Legislature will establish the grounds for judicial discipline that are in addition to violations of the Code of Judicial Conduct. The Legislature also will establish the other forms of discipline that may be imposed in addition to censure, retirement, and removal; the standards for investigations; and the provisions regarding the confidentiality of proceedings before the Commission.

Under the proposal, the Nevada Supreme Court will adopt a Code of Judicial Conduct and rules governing its handling of appeals of the Commission's decisions. The proposed amendment also requires the Commission to adopt rules of procedure for the conduct of its hearings and other activities deemed necessary to carry out its duties. Finally, the proposal would allow the Commission to consider matters relating to the fitness of a justice or judge on its own motion, even if a member of the public did not bring the matter before the Commission.

### ARGUMENTS FOR PASSAGE

The regulation of justices and judges is important to ensure public confidence in the Nevada judicial system. The Commission was estab-

lished to review and act on complaints from the public concerning justices and judges. Because the Justices of the Supreme Court establish the rules and procedures governing the Commission and hear appeals from the Commission's decisions, an appearance of partiality and bias in favor of the justices and judges is created. By removing the Supreme Court from the sole control over the Commission, as proposed in the amendment, the Commission's independence and ability to act effectively on valid complaints will be ensured. Authorizing the Legislature to establish the rules governing the grounds for discipline, the forms of discipline, and the standards for investigations and confidentiality of the Commission will remove any appearance of control and bias by the Supreme Court. It will also allow the public to participate in person or through their elected representatives in establishing the standards of conduct for judges.

**A "Yes" vote would amend the Nevada Constitution to revise the provisions regarding the Commission on Judicial Discipline.**

## **ARGUMENTS AGAINST PASSAGE**

The Commission is created as an independent body under the Nevada Constitution and is authorized to investigate complaints and impose sanctions on judges without the involvement of the Supreme Court. The public is represented on the Commission by three of its seven members, who cannot be attorneys or judges. The chairman of the Commission cannot be an attorney or a judge. Although the Supreme Court is required to make the rules governing the operation of the Commission, the Court does not control the Commission. Transferring the Supreme Court's authority to make rules to the Legislature will not increase public participation or make the Commission any more independent than it is under existing provisions. Finally, the separation of powers between the executive, legislative, and judicial branches of government is a fundamental, constitutional principle. Transferring the authority to establish rules governing the Commission to the legislative branch may violate the spirit of this principle.

**A "No" vote would retain the existing provisions regarding the Commission on Judicial Discipline under the Nevada Constitution.**

## **FISCAL NOTE**

**Financial Impact - No.** The proposal to amend the Nevada Constitution would divide the authority to establish rules governing the Commission on Judicial Discipline between the Legislature, the Supreme Court, and the Commission. Approval of this proposal would have no adverse fiscal impact.